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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,306	01/16/2004	Bruce S. Jones	NUKZ 2 00311-1	5363
27885	7590	09/22/2005		
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			EXAMINER UHLENHAKE, JASON S	
			ART UNIT	PAPER NUMBER
			2853	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/758,306	JONES, BRUCE S.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jason Uhlenhake	2853	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 22 rejected under 35 U.S.C. 102(b) as being anticipated by Amberntsson et al (U.S. Pat. 3,953,862).

Amberntsson et al. discloses:

- Regarding claim 22, a housing having a plurality of walls forming a top surface, a bottom surface (26), and side surfaces, said walls forming a chamber (12) for receiving ink;
- an outlet passage (25) extending from said bottom surface (26) for dispensing ink from said chamber (12); (Figure 2)
- a vent (33) including an opening through said top wall for venting air into said chamber (12); (Figure 2)
- a cylindrical neck having a outer end; (Figure 2)
- a vent (34) being a porous member for venting air into chamber with top, bottom, and side walls; (Figure 2)
- a cap (32) securing said porous member on said cylindrical neck. (Figure 2)

Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by Wenzel (U.S. Pat. 5,700,315).

Wenzel discloses:

- Regarding claim 25, a housing having a plurality of walls forming a top surface (16), a bottom surface (18), and side surfaces, said walls (20, 22) forming a chamber (33) for receiving ink; (Figures 1 and 2)
- an outlet passage (52) extending from said bottom surface (18) for dispensing ink from said chamber (33); (Figures 1 and 2)
- a vent (84) including an opening through said top wall for venting air into said chamber (33); (Figures 1 and 2)
- a vent being a diaphragm having a flexible portion overlying vent opening (Column 15, lines 1-8, Figures 1 and 2)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Amberntsson et al. (U.S. Pat. 3,953,862) in view of Kusano et al. (U.S. Pub. 2004/0022559).

Amberntsson et al discloses all of the claimed limitations except for the following, regarding claim 23, the cylindrical neck extends inwardly of chamber from top wall and is surrounded by a peripheral recess and said neck is adjacent to outer side of said top wall.

Kusano et al. discloses the following, regarding claim 23, a peripheral recess extending inwardly of said chamber from said top wall (Paragraph 0090, Figure 11).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to incorporate the teaching to the peripheral recess as taught by Kusano et al into the device of Amberntsson et al. The motivation for doing so would have been when a cover or cap is added it can be secured around the cylindrical neck preventing the possibility of leakage.

Claim 24 rejected under 35 U.S.C. 103(a) as being unpatentable over Amberntsson et al. (U.S. Pat. 3,953,82) as modified by Kusano et al. (U.S. Pub. 2004/0022559) as applied to claim 23 above, and further in view of Yoshimura et al (U.S. Pat. 5,085,355).

Amberntsson et al as modified by Kusano et al discloses all of the claimed limitations except for the following, regarding claim 24, a cap including a skirt.

Yoshimura et al. discloses the following, regarding claim 24, a cap (4) including a skirt (Figure 1).

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At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to incorporate the teaching of a cap including a skirt as taught by Yoshimura et al into the device of Amberntsson et al as modified by Kusano et al. The motivation for doing so would have been to ensure the cap is securely fastened to the cylindrical neck securing the contents of the container.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Uhlenhake whose telephone number is (571) 272-5916. The examiner can normally be reached on Monday - Friday 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Meier can be reached on (571) 272-2149. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JSU  
August 18, 2005

  
K. FIGGINS  
PRIMARY EXAMINER